

Message Text

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C O N F I D E N T I A L USBERLIN 1922

E.O. 11652: GDS

TAGS: PGOV, WB, GE, GW, UR

SUBJECT: BRUECKMANN CASE--SOVIET INQUIRIES

REF: BONN 16542

1. WHILE SOVIETS CLEARLY CAN ALWAYS MAKE ISSUE IF THEY WISH, AS EMBOFF POINTED OUT (REFTEL), THEY OBVIOUSLY AWARE THAT EVERY FEDERAL COURT EXCEPT CONSTITUTIONAL COURT HAS BEEN HANDLING ROUTINELY HUNDREDS OF BERLIN

CASES EVERY YEAR SINCE FRG WAS CREATED. INDEED THIS WAS MADE CLEAR DURING QA NEGOTIATIONS. IT MIGHT BE USEFUL HOWEVER TO POINT OUT TO SOVIET EMBOFF THAT PRESENT AMENDMENT TO 1953 LAW ON INNER-GERMAN CO-OPERATION IN CRIMINAL MATTERS DOES NOT EXTEND COMPETENCE OF BUNDESGERICHTSHOF TO BRUECKMANN CASE. LAW IN FACT SPECIFICALLY DRAFTED TO AVOID POSSIBILITY THAT BUNDESGERICHTSHOF COULD CONSIDER DECISION OF KAMMERGERICHT MADE PRIOR TO ENTRANCE INTO FORCE OF LAW. ONLY BERLIN STAATSANWALT
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WILL HAVE NEW POWERS TO RESOLVE BRUECKMANN CASE UNDER

AMENDMENT, AND HE GETS THOSE POWERS THROUGH BERLIN
LEGISLATIVE ACT, I.E., MANTELGESETZ. ONCE BRUECKMANN
CASE IS RESOLVED, BUNDESGERICHTSHOF WILL BE ABLE TO
REVIEW DECISIONS OF COURTS IN FEDERAL LAENDER AND
BERLIN IN SUBSEQUENT CASES, A PROCEDURE NO DIFFERENT FROM
SITUATION IN EFFECT UNDER HUNDREDS OF OTHER LAWS
IN FORCE IN BOTH FRG AND BERLIN.

2. AS TO SOVIET EMBOFF'S IDEA THAT ALLIES MIGHT
RESPOND TO SOVIET PROTEST BY PROMISING TO REVIEW
EVERY BUNDESGERICHTSHOF DECISION RELATING TO BERLIN,
PRESENT TALKING POINTS GO FAR
IN THIS DIRECTION, I.E., ASSURANCE THAT "THE ALLIES OF COURSE HAVE
TAKEN AND WILL CONTINUE TO TAKE SUCH STEPS AS MAY BE
NECESSARY TO ENSURE THAT THE EXERCISE OF JURISDICTION
BY COURTS PROVIDED FOR UNDER LEGISLATION ADOPTED IN
BERLIN IN NO WAY CONTRAVENES THE LEGAL POSITION WITH
RESPECT TO THE LACK OF COMPETENCE OF THE FEDERAL
CONSTITUTIONAL COURT IN BERLIN MATTERS."
WE DO, NOT BELIEVE WE SHOULD GO BEYOND THIS AND SHOULD AT ALL
COST AVOID UNDERTAKING THAT ENTAILED DETAILED REVIEW OF
SEVERAL HUNDRED CASES EACH YEAR THEREBY BECOMING
SOMETHING OF FINAL APPEALS BODY.KLEIN

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